

In the Supreme Court of the United States

OCTOBER TERM, 1991

ALABAMA, ET AL., PETITIONERS

v.

CHARLES BOWSHER, COMPTROLLER GENERAL
OF THE UNITED STATES, ET AL.

MINNESOTA AND FLORIDA, PETITIONERS

v.

CHARLES BOWSHER, COMPTROLLER GENERAL
OF THE UNITED STATES, ET AL.

ON PETITIONS FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTIONS PRESENTED

Under 31 U.S.C. 1322, the Secretary of the Treasury must transfer unclaimed monies of persons whose whereabouts are unknown to a specified account and pay claims from that account to the rightful owners. The questions presented are:

1. Whether the application of state custodial taking laws requiring the Secretary of the Treasury to transfer those funds to the States violates the Supremacy Clause, U.S. Const. Art. VI (No. 91-402).
2. Whether the Secretary of the Treasury's refusal to account for and transfer those funds to the States violates the Tenth Amendment (No. 91-416).

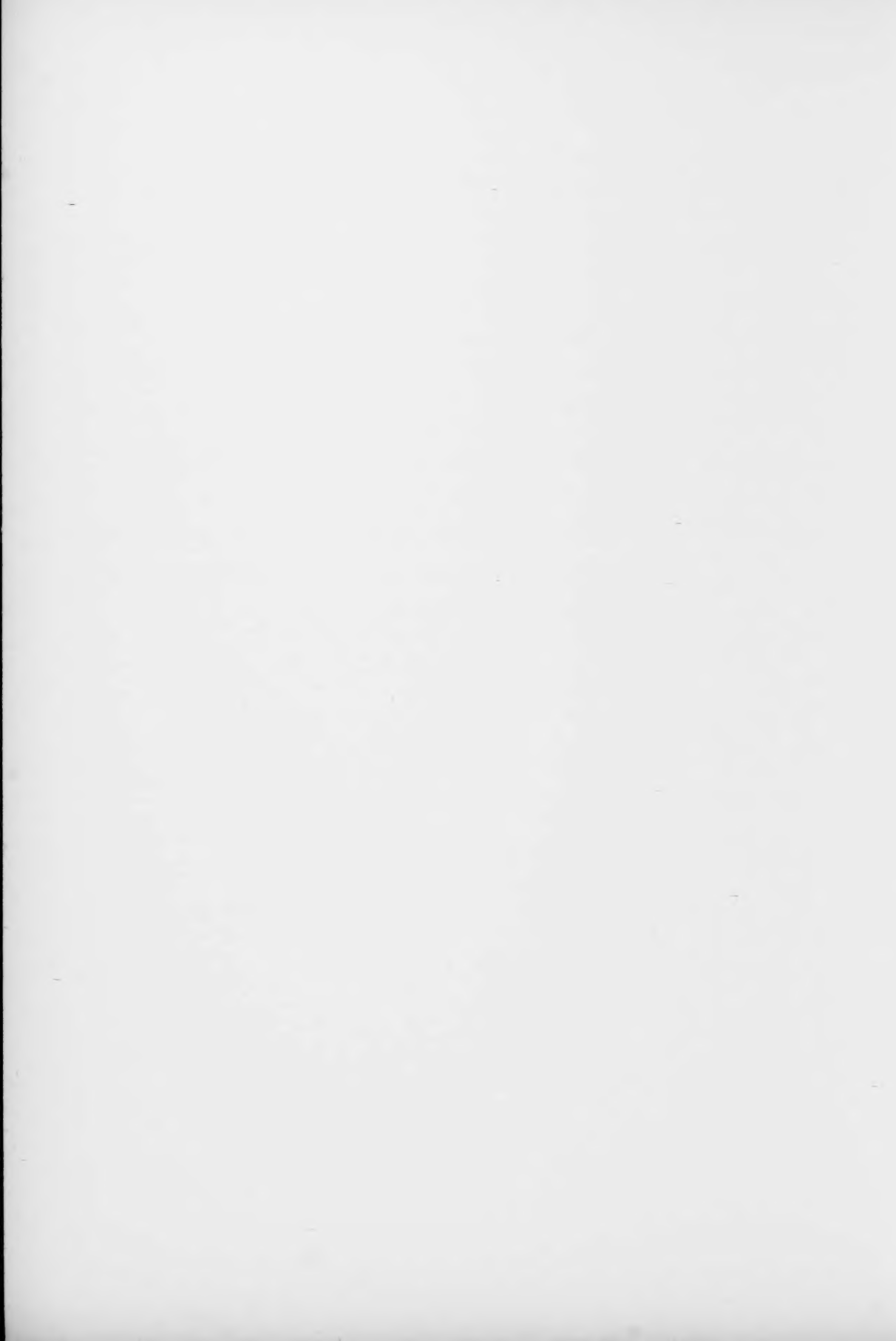


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In the Supreme Court of the United States

OCTOBER TERM, 1991

No. 91-402

ALABAMA, ET AL., PETITIONERS

v.

CHARLES BOWSHER, COMPTROLLER GENERAL
OF THE UNITED STATES, ET AL.

No. 91-416

MINNESOTA AND FLORIDA, PETITIONERS

v.

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OF THE UNITED STATES, ET AL.

*ON PETITIONS FOR A WRIT OF CERTIORARI
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OPINIONS BELOW

The opinion of the court of appeals, Pet. App. 1a-7a,¹ reported at 935 F.2d 332. The opinion of the district court, Pet. App. 8a-41a, is reported at 734 F. Supp. 525.

¹ "Pet. App." refers to the appendix to the petition in No. 91-402.

JURISDICTION

The judgment of the court of appeals was entered on June 11, 1991. The petitions for a writ of certiorari in No. 91-402 and in No. 91-416 were filed on September 9, 1991. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Under 31 U.S.C. 1322, the Secretary of the Treasury is required to transfer certain unclaimed federal funds belonging to individuals whose whereabouts are unknown from trust fund accounts listed in 31 U.S.C. 1321(a)(1)-(82) and 13 U.S.C. 1321(b) to the "Treasury trust fund receipt account 'Unclaimed Moneys of Individuals Whose Whereabouts are Unknown.'" ² Section 1322(a) provides that "[s]ubsequent claims to the transferred funds shall be paid" from that account and Section 1322(b) provides that necessary amounts will be appropriated for payment of those claims.

Under regulations collected in the Treasury Financial Manual ("TFM"), ³ the Secretary of the Treasury has directed federal agencies that administer trust funds listed in 31 U.S.C. 1321 to determine

² Trust fund accounts listed in 31 U.S.C. 1321 do not hold funds from which most federal benefits are paid. The statutes authorizing those payments typically provide for the retention or other disposition of unclaimed benefit payments. See, *e.g.*, Federal Employees Life Insurance Benefit Fund, 5 U.S.C. 8705(d); Civil Service Retirement Fund, 5 U.S.C. 8345(i); Federal Old-Age and Survivors Insurance Fund, 42 U.S.C. 401(m); and Railroad Retirement Fund, 45 U.S.C. 231.

³ The TFM embodies the required reports and accounting that each executive agency must maintain and remit to the Secretary of the Treasury.

whether those accounts hold unclaimed monies and, if they do, to transfer such monies to the unclaimed monies accounts. 1 TFM 6-3030. The Secretary has designated two such accounts, both of which "represent moneys held for rightful owners."⁴ 1 TFM 6-3020, 6-3030; C.A. App. 33.

2. Petitioners, 23 States, filed suit in the United States District Court for the District of Columbia against the Comptroller General and the Secretary of the Treasury. Petitioners claimed that the Secretary—a "holder" of property as defined by their unclaimed property statutes—must prepare a report listing the States in which the missing property owners last resided and the amounts owed, and must remit unclaimed monies to the respective States. Petitioners did not claim any monies on their own account (*e.g.*, by operation of laws of escheat); instead, they sought custody and current use of the monies unless and until the rightful owners appeared.

The district court granted judgment in favor of the federal respondents. Pet. App. 8a-41a. It held that petitioners' application of their unclaimed property statutes to the monies held by the Treasury under 31 U.S.C. 1322 would violate the Supremacy Clause. U.S. Const. Art. VI. It further held that, since petitioners made no claim to those monies on their own account, their Tenth Amendment claim was "meritless." Pet. App. 37a.

⁴ Trust fund account number 20X6133 contains deposits meeting the following criteria: "(a) amount of \$25.00 or more; (b) a refund, upon a claim, would be absolutely justified; (c) there is no doubt as to legal ownership of the funds; (d) a named individual, business, or other entity can be identified with the item." 1 TFM 6-3040.10. Miscellaneous receipt account number 1060 receives deposits in amounts less than \$25.00 or which do not otherwise meet the criteria for transfer into Account 20X6133.

3. The court of appeals affirmed. Pet. App. 1a-7a. First, it held that application of State unclaimed property laws to monies held by the Treasury under 31 U.S.C. 1322 would violate the intergovernmental immunity component of the Supremacy Clause. That immunity forbids the States from "directly regulat[ing] the federal government's operations or property." Pet. App. 3a (citing *North Dakota v. United States*, 110 S. Ct. 1986, 1994 (1990); *Hancock v. Train*, 426 U.S. 167, 178-180 (1976); *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819)). As the court of appeals observed, "[t]he money here is federal money." Pet. App. 4a. Accordingly, application of State unclaimed property laws "would amount to direct regulation of federal property. In extracting funds from the Treasury, the states would effectively subordinate federal property to their own laws and appropriate that property, at least for a period, for themselves." *Ibid.* The court found irrelevant petitioners' contention that State unclaimed property laws had the same objective as 31 U.S.C. 1322, for "the Supremacy Clause does not permit [petitioners] to take over a federal program just because they think they can do it better." Pet. App. 5a.

Second, the court of appeals held that application of State unclaimed property laws to the unclaimed monies at issue here was preempted by 31 U.S.C. 1322. "In passing § 1322, Congress was concerned to preserve or advance the convenience both of the claimant in securing payment and of the government in making it." Pet. App. 5a. Application of State unclaimed property laws "would plainly thwart Congress's aims":

Transferring the money from the Treasury to the states would surely make it less, not more, accessible to claimants, who presumably picture

the federal government as the relevant payor. Alternatively, for the federal government to send the money off to a state, and then recoup it for purposes of payment, would multiply the transactions needed to accomplish the otherwise fairly simple federal objective.

Id. at 5a-6a. The court of appeals observed that the States' historic power to escheat property was not at issue, and distinguished decisions concerning escheated property owned by the State from the custodial interest asserted by petitioners in this case. *Ibid.*

The court of appeals, like the district court, summarily rejected petitioners' Tenth Amendment argument as being "without merit." Pet. App. 6a n.2.

ARGUMENT

Contrary to petitioners' contention (91-402 Pet. 10), the States need not be given custody of unclaimed federal monies held in the United States Treasury in order for "state statutes to play a meaningful role in our federal system."

1. The intergovernmental immunity doctrine prevents the States from applying their unclaimed property laws to funds held by the Secretary of the Treasury under 31 U.S.C. 1322. Petitioners do not seriously dispute that the accounts established by the Secretary of the Treasury pursuant to that Section contain "federal money." Pet. App. 4a. As the court of appeals explained: "That various persons have claims against the United States in amounts exactly matching the funds, and intended by Congress to be paid from these funds, does not give those individuals a property interest in the money." *Ibid.* Moreover, this Court has recognized Congress's preeminent authority to manage federal property—even when that

property is held to pay a debt. *Buchanan v. Alexander*, 45 U.S. (4 How.) 20, 20-21 (1846). For purposes of intergovernmental immunity analysis, it is beside the point whether application of State unclaimed property laws would help or hinder the objective of locating the rightful owners of the unclaimed monies. For it is beyond peradventure that those laws—which may require as many as 50 different forms of accounting, reports, and arrangements for the transfer of funds—interfere with the Treasury Secretary’s administration of the monies entrusted to him under 31 U.S.C. 1322.

Contrary to petitioners’ contention (91-402 Pet. 17-23), 31 U.S.C. 1322 cannot be “filled in” with State unclaimed property laws. To begin with, petitioners did not press this argument in the court of appeals and that court did not pass on it. It is therefore not properly before this Court. See Sup. Ct. R. 15.1. In any event, 31 U.S.C. 1322 leaves no gaps to be filled. Unlike *Kamen v. Kemper Financial Services, Inc.*, 111 S. Ct. 1711, 1717 (1991), which addressed a gap in federal securities laws regarding the scope of the demand requirement in shareholder derivative litigation, or *United States v. Kimbell Foods, Inc.*, 440 U.S. 715, 728 (1979), which concerned the absence of lien priority rules in federal lending programs, 31 U.S.C. 1322 itself specifies where the balance of specified trust funds accounts “shall” be transferred (the Treasury trust fund receipt account “Unclaimed Moneys of Individuals Whose Whereabouts are Unknown”) and suggests when the custodianship of the Secretary of the Treasury shall end (upon the payment of “[s]ubsequent claims to the transferred funds” to claimants). Since Section 1322 itself designates the account to which the transferred funds are to be deposited (until the

rightful owners make claims through the appropriate agencies, 31 U.S.C 3528), there is no authority to resort to State unclaimed property laws to find a custodian for those funds.

2. In the alternative, Section 1322 preempts State unclaimed property laws. The relevant inquiry is whether Congress intended the control and disbursement of federal monies to satisfy federal debt to be a federal matter—either because the legislation is so pervasive, or the federal interest is so dominant that it should be presumed that the federal scheme prevails over state law. And federal regulations implementing a statutory scheme can preempt state law.⁵ *New York v. FCC*, 486 U.S. 57, 63-64 (1988); *Fidelity Fed. Sav. & Loan Ass'n v. De La Cuesta*, 458 U.S. 141, 153 (1982). The fact that state property law is at issue does not alter the preemption analysis. *Id.* at 153.

State unclaimed property laws are inconsistent with 31 U.S.C. 1322. As the court of appeals reasoned, Congress believed that collecting “all unclaimed money accounts under one head” would make the funds “more accessible” to the claimants and simpler

⁵ Indeed, the federal regulations in this case make clear that the unclaimed monies in the Section 1322 accounts are held for “rightful owners.” 1 TFM 6-3020, 6-3040.10. In this way, the regulations track the statutory scheme, 31 U.S.C. 3528, which dictates that certifying officials at the transferring agencies determine who has a valid claim for payment under the various trust statutes which set forth the creditors or rightful claimants.

Contrary to petitioners' contention (91-402 Pet. 7, 15-16), the regulations are no less regulations because they are not in the Code of Federal Regulations. The Secretary of the Treasury promulgated those regulations pursuant to 31 U.S.C. 321, 3512(a) (5), and 3513(a). They exhaust the reporting and accounting requirements related to Section 1322 funds.

for the federal government to administer. Pet. App. 5a (quoting 78 Cong. Rec. 8244 (1934) (statement of Rep. Griffin)). Although petitioners contest the wisdom of collecting unclaimed federal monies in a single Treasury account (91-402 Pet. 15), that Congress required such a transfer is beyond dispute. By dispersing unclaimed federal monies into 50 State accounts, application of State unclaimed property laws would reverse the very consolidation that Congress required.

State unclaimed property laws trench on other provisions of 31 U.S.C. 1322 and other federal laws. State laws require transfer of unclaimed funds to State custodians; Section 1322(a) limits disbursements to claimants (*i.e.*, those with "claims to the transferred funds"). State laws have independent procedures for identifying claimants; 31 U.S.C. 3325 and 3528 authorize disbursement from the Section 1322 accounts to claimants only after the agency administering the original trust statute authorizes the payment under the relevant federal statutes.⁶ State

⁶ Sections 3325 and 3528, together with Section 1322, form part of a comprehensive disbursement and certification scheme to manage federal money in the Treasury, including federal debt. Payment of claims for monies in accounts 20X6133 or 1060 typically are authorized by the certifying officials at the individual agencies without claims settlement action by GAO. 1 TFM 6-3050, 3060, 3075. See also GAO Policies and Procedures Manual for Guidance of Federal Agencies, Title 7, § 21.11 (1983). Thus, the claimant must contact the particular transferring agency, bureau, or office and must comply with the requirements of that agency, bureau, or office for perfecting a claim. C.A. App. 35-36. The certifying official at the transferring agency, charged with the responsibility of reviewing claims for payment, must examine, *inter alia*, the "information stated in the certificate, voucher, and supporting records * * * [and] the legality of a proposed pay-

unclaimed property laws purport to extinguish the liability of the federal government (as a holder of unclaimed property turned over to the State), Pet. App. 54a-55a, 61a; 31 U.S.C. 1322(a) provides that claims to the transferred funds "shall be paid" by the Secretary of the Treasury.

It bears emphasis that petitioners make no claim to title or ownership of unclaimed federal monies held pursuant to Section 1322. That a State law of escheat might support a State's claim to Section 1322 funds, therefore, does not imply that State unclaimed property laws can give rise to a similar claim.

3. The Secretary of the Treasury's refusal to account for and turn over unclaimed federal monies

ment under the appropriation or fund involved" and, if appropriate, certify vouchers for payment. 31 U.S.C. 3528; see C.A. App. 35-36; 1 TFM 6-3060, 6-3075. If the certifying official has a question regarding the legality or propriety of the claim—and if Congress has not vested claims settlement action in that administrative agency—the agency can submit the matter to the General Accounting Office. 1 TFM 6-3050; see GAO Policy and Procedures Manual for Guidance of Federal Agencies, Title 7, § 21.11 (1983); C.A. App. 30, 36.

Should the transferring agency determine that the claim for monies is legal and proper, the certifying official will initiate payment through the certification of a Voucher and Schedule of Payment Standard Form 1166 or its electronic certification equivalent. 1 TFM 6-3060; C.A. App. 36. This payment voucher is then transmitted to a disbursing official, who for most civilian Executive Branch agencies is an employee or official of the Treasury Department. 31 U.S.C. 3321(a); see C.A. App. 35-36. Pursuant to 31 U.S.C. 3325(a), "[a] disbursing official in the executive branch of the United States Government shall (1) disburse money only as provided by a voucher certified by (A) the head of the executive agency concerned; or (B) an officer or employee of the executive agency having written authorization from the head of the agency to certify vouchers."

that do not belong to any State does not violate the Tenth Amendment. That Amendment protects, at most, the prerogatives of the States as States. Although petitioners are correct (No. 91-416 Pet. 16) that State property law is a traditional State concern, federal monies in the United States Treasury do not fall within that historic sphere. Cf. *United States v. Oregon*, 366 U.S. 643, 648-649 (1961).

CONCLUSION

The petitions for a writ of certiorari should be denied.

Respectfully submitted.

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